

DECISION



28780
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-212940.3; B-212940.4 DATE: July 13, 1984

MATTER OF: Doyon Construction Co., Inc.--
Request for Reconsideration

DIGEST:

Requests for reconsideration of decision and claim for bid preparation costs are dismissed where the question of whether issues relevant to deciding these matters will be considered by a United States district court is now pending before a United States court of appeals.

Landmark Commercial Contractors, Inc. (Landmark), and the Army Corps of Engineers (Corps) request that we reconsider our decision in Doyon Construction Co., Inc., B-212940, Feb. 14, 1984, 84-1 C.P.D. ¶ 194, in which we sustained a protest by Doyon Construction Co., Inc. (Doyon), against the Corps' acceptance of Landmark's bid under invitation for bids (IFB) No. DACA85-83-B-0025. We found that the Corps should have rejected Landmark's bid as non-responsive because Landmark failed to acknowledge a material amendment to the IFB. We recommended that the Corps terminate for the convenience of the government the contract it awarded to Landmark.

Following our decision, Landmark filed a motion in the United States District Court for the District of Alaska (No. A84-121 CIV) seeking a preliminary injunction against the Corps terminating Landmark's contract and awarding a contract to Doyon. On April 17, the district court dismissed the action because it found it lacked jurisdiction to grant the requested relief. On April 19, Landmark and the Corps entered into a stipulation staying the court's denial of Landmark's motion for a preliminary injunction and barring the Corps from terminating Landmark's contract while Landmark appealed the district court's determination. This stipulation became the subject of the district court's order on April 20, 1984, staying the court's April 17 dismissal and barring termination of Landmark's contract during the pendency of Landmark's appeal. Landmark's appeal is now pending before the United States Court of Appeals for the Ninth Circuit.

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By letter dated May 7, Doyon requested that our Office award Doyon bid preparation costs it incurred in connection with this procurement.

It is the policy of this Office not to consider issues that are pending before a court of competent jurisdiction unless the court requests or otherwise expresses an interest in receiving our views. Schmid Laboratories, Inc.--
Reconsideration, B-212024.3, Sept. 23, 1983, 83-2 C.P.D. ¶ 368. See Space Age Engineering, Inc., B-208902.3, July 26, 1983, 83-2 C.P.D. ¶ 124. We recognize that the issue before the Court of Appeals is whether the district court has jurisdiction to entertain Landmark's suit. However, in view of the fact that the stipulation between Landmark and the Corps is the subject of an April 20 order by the district court, we believe that the issues presented by Landmark's request for reconsideration are still within the court's jurisdiction. The ultimate resolution of these issues may also impact on our determination of Doyon's claim for bid preparation costs. Consequently, at this time, it would be inappropriate for us to rule on the requests for reconsideration or Doyon's claim for bid preparation costs. Accordingly, we are closing our file on these matters. In the event the Court of Appeals finds that the district court does not have jurisdiction to entertain Landmark's suit, the parties may resubmit the issues to this Office.

The requests for reconsideration and the claim for bid preparation costs are dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel